

" TERMINATION OF EMPLOYMENT IN THE PRIVATE SECTOR "

BY:

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## INTRODUCTION

In any industrial organisation there are two parties: the employer and the employee. The employee earns a living by offering his labour and skill, works for that employer. The terms and conditions of employment are agreed upon when a person commences work. Ordinarily, discord may occur between the employer and the employee over the terms of employment. Hence, innumerable questions may arise out of the employer-employee relationship which may lead to a trade dispute.

Trade dispute is defined in the Industrial Relation Act 1967 in Section 2 as any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any such workmen. The word "non-employment" is evidently one of the issues whereby a dispute could be raised. The term "non-employment" does not mean unemployment but a state where an employee ceases to be employed and that means the termination of employment. The essential feature in the termination of employment is the severance of the master-servant relationship, or in modern parlance, the employer-employee relationship.

"To terminate" means to put an end to; to make to cease or to end and "termination" means to end in time or existence; close; cessation or conclusion. The meaning of termination with respect to a contract refers to an ending, usually before the end of the anticipated term of the contract; which termination may be by mutual agreement or may be exercised by one party or may be by exercise of one party of his remedies due to the default of the other party. Usually termination before the end of the anticipated term of the contract will amount to victimisation by the employer towards the employee and in turn, this will lead the employee to bring an action against the employer for unfairly terminating their services.

There are various kinds of termination which can either be justified or unjustified termination. This termination

may be effected in several ways, the most common being:

- a. as a result of the completion of a specified piece of work for which a contract of employment was established.
- b. the expiry of the stipulated period of employment.
- c. the voluntary retirement of the workman.
- d. when the workman abandons his employment and under Section 15(2) of the Employment Ordinance, 1955 the workman is deemed to have broken his contract.
- e. when continued ill-health prevent the workman from continuing in his employment.
- f. termination as a result of retrenchment.
- g. termination as result of workman's death, transfer, lay-off.
- h. when the workman is discharged or dismissed.

Disputes normally arise in cases of termination of employment by victimisation, discharge, retrenchment and dismissal. It has been found out that there are unscrupulous employers who are exploiting temporary workers in the Klang Valley. These workers were deprived of their fringe benefits like annual bonus, medical facilities and were dismissed without due course. It has been reported too that the employer was in breach of the rule of natural justice in dismissing the employees .

In such cases, the aggrieved party has to prove that the termination was mala fide. Under Section 20(1) of the Industrial Relation Act, 1967, "where a workman who is not a member of a trade union considers that he has been dismissed without just cause or excuse by his employer, he may within 30 days of the dismissal, make representations in writing to the Director-General to be reinstated in his former employment. If the matter cannot be settled, the case would be referred to the Industrial Court as laid down in Section 20(3) of the Industrial Relation Act, 1967.

However, if the workman prefers to claim indemnity in lieu of notice for wrongful dismissal, he may do so under Section 69 of the Employment Act, 1955. The indemnity claimed must arise out of contracts of service or provisions of Employment Ordinance, 1955.